

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 19TH OCTOBER 2007 / 27TH ASWINA 1929

MFA.No. 1649 of 1996()

OPMV.3081/1993 of MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA
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APPELLANT:

SHIBU, S/O.GOPALAN, PARAKULAM HOUSE,
KARROOR DESOM, ALOOR VILLAGE, MUKUNDAPURAM TALUK.

BY ADV. SRI.P.T.GOVINDAN

RESPONDENTS:

1. T.A.ANTONY, S/O.AUGUSTINE, THEKKOODAN HOUSE,
P.O.KARUVANNOOR.
2. VIKRAMAN, S/O.VAIKAPPADI KUTTAPPAN,
P.O.PERAMBRA, KODAKARA VILLAGE.
3. THE MANAGER, ORIENTAL INSURANCE CO. LTD.,
KODUNGALLOOR BRANCH.

BY ADV. SRI.MARTIN G.THOTTAN
SRI.GEORGE CHERIAN (THIRUVALLA)

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 19/10/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A.No.1649 of 1996

Dated this the 19th October, 2007.

J U D G M E N T

The claimant in O.P.(M.V.) No.3081/1993, on the file of the Motor Accidents Claims Tribunal, Irinjalakuda, is the appellant. The appellant met with an accident on 19.3.1991. He was riding a bicycle from Karoor to Kodakara. When he reached the place of accident, a scooter bearing Registration No.KLR 9131, came from the western side, and accident took place, and the appellant sustained injuries including fracture of left ankle. According to the appellant, accident occurred due to the rash or negligent driving of the scooter by the second respondent. He claimed an amount of Rs.75,000/= as compensation. The first respondent did not file any written statement. The second respondent denied the negligence alleged. The quantum of compensation claimed was also disputed. It was contended that the vehicle was covered with a valid policy of insurance issued by the 3rd respondent. 3rd respondent admitted the existence of a valid policy, but denied its liability. It was contended that the Insurer transferred the

vehicle to the second respondent without the knowledge and consent of the Insurer, and there was no endorsement. The Tribunal found that the petitioner failed to prove the negligence alleged against the rider of the scooter. It was found that he even failed to establish that he is entitled to claim compensation under 'no fault liability', and hence, dismissed the suit. Challenging that award, this appeal is filed.

2. Before the Tribunal, Exts.A1 to A3 were marked. Exts.A1 to A3 are the discharge summary, disability certificate and medical bills. Relying on the oral evidence, the Tribunal found that the appellant entered in the National Highway from a pocket road, and the scooterist was keeping his correct side. It was held that the petitioner must have entered the national highway abruptly, and the second respondent could not have anticipated bi-cycle and hence, the accident took place.

3. Appellant produced a certified copy of the F.I. Statement, copy of the final report and scene mahazar, accident-cum-wound certificate and also a copy of the disability certificate before this

Court, along with C.M.P.No.3311/1997, with a prayer to receive the same. Today, I have allowed that application and documents are marked as Exts.A4 to A9. Copy of the charge sheet produced before this Court shows that a criminal case was registered against scooterist. Ext.A5 shows that final report was filed against the second respondent. Ext.A6 is the copy of the scene mahazar. Appellant produced a copy of the disability certificate issued by the Doctor. It shows that appellant will not be able to carry on his profession of tree climbing. It is noted that he was a toddy tapper and he will not be able to walk long distance. Considering all aspects, the doctor has assessed his disability to 5%. So, I am of the view that the appellant is entitled to get at least an amount of Rs.12,500/= as compensation on all counts, which will carry interest at the rate of 6%.

In the result, M.F.A. is allowed in part. An award is passed allowing the appellant to recover an amount of Rs.12,500/= as compensation from the respondents, with 6% interest from the date

of petition, till the date of realisation. The third respondent shall deposit the above amount in favour of the appellant. On deposit, the appellant can withdraw the amount.

**K.PADMANABHAN NAIR,
JUDGE**

nj.

K.PADMANABHAN NAIR, J.

M.F.A.No. 1649 of 1996

J U D G M E N T

Dated: 19th September, 2007.
